binding on the appellants unless timeously appealed against, which it had not been.

Their Lordships have no hesitation in rejecting this argument. The letter of February 17, 1973 is no more than an expression of opinion as to the legal position, and can in no sense be regarded as a formal decision under the Act. Even if it were, there is no good reason why, in dealing with an appeal against the section 128 notice, the court should be precluded from examining, so far as necessary for the disposal of that appeal, the validity of prior decisions forming the background to the issue of that notice. The notice required certain action to be taken by the appellants, and it very directly affected their rights inasmuch as failure to take such action was liable to lead to forfeiture of their land. A challenge to the validity of the notice was essential to the protection of their interests, which was not the position in regard to any earlier purported decision of the Collector or the Land Executive Committee, in particular the letter of February 17, 1973 or the letter of February 17, 1976 (alternatively founded on as being the relevant decision), requiring payment of a premium for placing the land in the building category under section 124 of the Code. Their Lordships are accordingly of opinion that, in a timeous appeal against the section 128 notice, the appellants were in a position to open up all matters upon which its validity depended, in particular the questions whether their land was subject to the condition of agricultural use only and whether on a proper construction of section 53 use of it for building purposes was prohibited.

For these reasons their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal should be allowed, and that the order of the High Court directing the cancellation of the section 128 notice should be restored. The respondent must pay the appellants' costs in the Federal Court and before this Board.

Appeal allowed.

Solicitors: *Macfarlanes; Stephenson Harwood.*

SINGAPORE REPORTS

DART SUM TIMBER (PTE.) LTD. v THE BANK OF CANTON LTD.

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.)
March 9, 1982]
[Singapore – Civil Appeal No. 100 of 1980]

Company Law – Guarantee made by company director – Whether authorised to execute guarantee on behalf of company.

Guarantee – Execution of Guarantee by company director – Whether ultra vires – Scope of s. 133A of Companies (Amendment) Act 1974.

Statutory Interpretation – Provision unambiguous – Intention of Legislature.

The plaintiffs/respondents claimed for $401,793.70 and interest under a written guarantee of July 31, 1974 by which the defendants guaranteed payment on demand of all moneys which were then or might thereafter be owing by Ta Leong Produce (Pte.) Ltd. on the general balance of its account with the plaintiffs. The claim was in respect of four advances made on letters of credit.

The defendants contended that the guarantee was signed by Wong Kee Loh without their authority and that the advances were made in violation of section 133A of the Companies Act which came into force on November 15, 1974.

The facts revealed that Wong owned 400,000 shares in Ta Leong and the official address of Ta Leong and the defendants were the same.

In the lower court, D'Cotta J. held that the guarantee was executed by Wong Kee Loh and Ong Say Beng, both directors of the defendants and was in compliance with Clause 97 of the Articles of Association (see [1981] 2 M.L.J. 58). The defendants appealed against the said judgment of the learned judge.

Held, allowing the appeal: (1) in arriving at his conclusion that Wong Kee Loh had the authority, express or implied, to execute the guarantee on behalf of the defendants, the learned judge founded it mainly on the erroneous basis that Wong Kee Loh was the managing director of the defendants;

(2) the learned judge failed to appreciate that the defendants at no time had an account with the plaintiffs and that the letters of credit were opened on behalf of Ta Leong and not the defendants and that Wong Kee Loh was a main shareholder and managing director of Ta Leong, the principal debtor of the plaintiffs; no monies were advanced by the plaintiffs to Ta Leong until October/November 1975 well after section 133A of the Companies Act had come into force;

(3) the transactions were caught by the said section 133A and the effect of the section on the guarantee was to discharge it by frustration as the further performance of it had become illegal.

Case referred to:–

(1) *Sussex Peerage Case* 8 E.R. 1034

COURT OF APPEAL.

D. Johnson Q.C. (*Y.M. Jumabhoy* with him) for the appellants.

K.S. Chung (*Miss Molly Lim* with him) for the respondents.

Cur. Adv. Vult.

Chua J. (delivering the judgment of the Court): This appeal arises from a Judgment of D'Cotta J, allowing a claim by the Respondents (Plaintiffs) against the Appellants (Defendants) for the sum of $401,793.70 together with interest thereon on a written Guarantee dated the July 31, 1974 purportedly executed by the Defendants in favour of the Plaintiffs.

At the conclusion of the hearing of the appeal we allowed the appeal and now give our reasons.

The Plaintiffs' claim against the Defendants was for the sum of $401,793.70 with interest thereon under a written Guarantee dated July 31, 1974, by which the Defendants guaranteed payment on demand of all monies which were then or might thereafter be owing by Ta Leong Produce (Private) Ltd. (Ta Leong) on the general balance of its account with the Plaintiffs. The Guarantee was signed by Wong Kee Loh, who was the Chairman and Director of the Defendants.

The claim was in respect of four advances made on Letters of Credits as follows:

1. Letter of Credit No. CB-21145 dated October 25, 1975, .. $124,176.74
2. Letter of Credit No. WTB-21422 dated November 21, 1975 .. $ 75,763.13
3. Letter of Credit No. WTB-21455 dated November 25, 1975 .. $ 37,824.35
4. Letter of Credit No. WTB-21441 dated November 25, 1975, .. $122,921.63

The Defendants contended that they did not authorise the signing of the Guarantee and that the Guarantee so signed was without their authority, express or implied. Furthermore the Defendants also contended that the advances were made in violation of section 133A of the Companies Act.

The learned trial Judge found that Wong Kee Loh had "full power express, ostensible and implied to execute the Guarantee on behalf of the Defendant Company" and held that section 133A of the Companies Act was "irrelevant to this action" and that "there is no reason or justification for giving the section retrospective effect".

The background of this matter is shortly this. In 1974 the directors of Ta Leong were

Ong Say Beng
Wong Kee Loh
Hii Siu Chiong
Ting Hie Ing
Hii Yii Pan.

The paid up capital at that time was $600,000.00 of which Wong Kee Loh owned 400,000 shares and his wife Ting Hie Ing 100,000 shares.

The directors of the Defendants in 1974 were

Wong Kee Loh
Ong Say Beng
Hii Yii Pan
Tan Kian Kuen.

Wong Kee Loh together with his wife Ting Hie Ing owned 449,000 shares out of 820,000 shares issued.

The addresses of Ta Leong and the Defendants were at 6-A, 6th Floor, Far Eastern Bank Building, 156, Cecil Street, Singapore, and both offices shared the same premises with a glass partition separating them and the name plates of the two companies were placed one on top of the other.

The credit facilities for Ta Leong were negotiated by Wong Kee Loh with Yap Siong Eu, the Regional Adviser of the Plaintiffs. Wong Kee Loh was last seen and heard in Singapore in March, 1976.

It is necessary to outline briefly the evidence of Yap Siong Eu. He first met Wong Kee Loh in 1966 or 1967 in Kuching. Wong Kee Loh was then a director of the Hock Wah Bank. Wong Kee Loh went to see Yap Siong Eu at the Bank of America in Singapore. Yap Siong Eu was then the business adviser of the bank. Wong Kee Loh obtained overdraft facilities from the bank for two companies – Ek Leong and Delta Tai Leong – to enable the two companies to speculate in pepper.

In February, 1972, Wong Kee Loh saw Yap Siong Eu again. Wong Kee Loh said he was the Chairman of the Defendants and a dominant shareholder and wanted to open an account with the Bank of America and asked for credit facilities to finance export of timber logs by the Defendants from Sarawak. Soon after that Yap Siong Eu left the Bank of America and joined the Plaintiffs.

In 1974 Wong Kee Loh approached Yap Siong Eu on behalf of Ta Leong to open an account with the Plaintiffs for credit facilities. Wong Kee Loh told him that he, Wong Kee Loh, had opened an account with the Bank of America on behalf of the Defendants. A search was made at the Registry of Companies and it was ascertained that Wong Kee Loh was the biggest shareholder of the Defendants. Wong Kee Loh handed to Yap Siong Eu the Memorandum and Articles of Association of both Ta Leong and the Defendants and also the audited accounts for 1973 signed by Wong Kee Loh. Yap Siong Eu authorised the opening of the bank account with the Plaintiffs and asked for a guarantee from all the directors of Ta Leong and also a guarantee from the Defendants. The account was opened on the June 21, 1974. The Guarantee was signed at 6-A, Far Eastern Building by Wong Kee Loh on behalf of the Defendants as director and witnessed by Yap Siong Eu.

Yap Siong Eu said that he was not a frequent visitor to Wong Kee Loh's office. His impression was that Wong Kee Loh was "the boss of the show". He said due to his personal knowledge of the substantial loss incurred by Wong Kee Loh in his previous speculations he insisted on the Guarantee otherwise he would not have granted the loan. He was satisfied that Wong Kee Loh was representing the Defendants.

In cross-examination when he was asked, "There was no other representation from any other directors of Dart Sum?" He replied "I did not know the rest". Then he was asked if he read the Memorandum & Articles of Association given to him and he said he did not. To the question, "In the light of your knowledge of substantial losses of Wong did you not enquire of Defendant Co.?". He replied "Not necessary, he could get me a guarantee". He was then shown Ex. D 1. He said it was handed to him by Wong Kee Loh a few days after the Guarantee was signed. Ex. D 1 purports to be a resolution of the Defendants.

The main ground of appeal was that, in the light of all the evidence adduced, the learned trial Judge was wrong in law and in fact in holding that the Defendants' Chairman, Wong Kee Loh, had authority to execute the Guarantee and thereby making the Defendants liable.

We were of the view that the findings of the learned trial Judge were unsupportable.

The learned Judge erred in his finding that "The Guarantee was executed by Wong Kee Loh and Ong Say Beng both directors of the Defendant Company and was in compliance with Clause 97 of the Articles of Association".

The Guarantee was in fact executed by Wong Kee Loh alone as director and witnessed by Yap Siong Eu. Ong Say Beng did not execute the Guarantee. By Article 97 the seal of the Company "shall only be used by the authority of the directors or of a Committee of the directors authorised by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose". The Guarantee does not bear the seal of the Defendants. It was signed by Wong Kee Loh as director over the rubber stamp of the Defendants. It was not countersigned by the Secretary or a second director. The rubber stamp was affixed by Ong Say Beng on the instruction of Wong Kee Loh. Ong Say Beng took the rubber stamp from the table without the knowledge of anyone in control of the Defendants. Ong Say Beng's duties were related solely to Ta Leong.

The learned Judge placed emphasis that Wong Kee Loh "figured prominently in the Defendant Company"; that "he ran and managed the business"; that "Wong was the driving force of the Company"; that "he did what he liked by virtue of the fact that he owned the majority of the shares and apparently knew the business well while the others merely acquiesced to whatever was done by him". All these findings were in complete disregard of the evidence adduced or there was no such evidence adduced. The evidence disclosed that Wong Kee Loh took no part in the running of the Defendants but was running Ta Leong and that the managing director of the Defendants was Hii Yii Pan.

In arriving at this conclusion that Wong Kee Loh had the authority, express or implied, to execute the Guarantee on behalf of the Defendants, the learned Judge founded it mainly on the basis that Wong Kee Loh was the managing director of the Defendants. It is clear that the finding of the learned Judge was founded on an erroneous premise.

The learned Judge said "I was satisfied from the evidence that when Wong obtained the advances by way of letters of credit he did so on behalf of the Defendant Company". The learned Judge failed to appreciate that the Defendants at no time had an account with the Plaintiffs and that the letters of credit were opened on behalf of Ta Leong and not the Defendants and that Wong Kee Loh was a main shareholder and managing director of Ta Leong the principal debtor of the Plaintiffs.

The learned Judge had failed to appreciate that the Resolution dated July 10, 1974 (Ex. D 1) purported to be signed by Wong Kee Loh and the Secretary of the Defendants was proved to be false.

The Resolution Ex. D 1 was typed on the Defendants' letterhead and it reads:

"Resolved to guarantee Messrs. Ta Leong Produce Private Limited of 6-A, 6th. Floor, Far Eastern Bank Building, 156, Cecil Street, Singapore at Bank of Canton Limited Singapore up to S$400,000 (Singapore Dollars: Four Hundred thousand only) in letters of credit and trust receipts outstanding".

It was signed by Wong Kee Loh (Chairman) and Ong Say Beng (Secretary). Ong Say Beng was not the Secretary of the Defendants.

Ex. D 1 is not a record of a resolution passed by the Defendants. It was not signed by a majority of the directors of the Company as required by Article 92 of Defendants' Articles. Furthermore, the Plaintiffs never pleaded that Ex. D 1 conveyed any authority on Wong Kee Loh and at the trial the evidence on behalf of the Plaintiffs was to the effect that they did not rely on it. Yap Siong Eu said that he received it a few days after the Guarantee was signed but never bothered about it, yet he put the bank's chop on it verifying the signatures. He said he only verified the signature of the Chairman but not that of the Secretary. It seemed to us that the requirements for the signing and terms of this document were of the highest significance. The fact that Yap Siong Eu had asked for express authority to enter into the Guarantee showed that Yap Siong Eu knew that Wong Kee Loh was not clothed with authority as Chairman. The Plaintiffs did not and could not have relied on any ostensible or implied authority of Wong Kee Loh to sign the Guarantee. The terms of the authority in Ex. D 1 were limited to $400,000.00 in Letters of Credit and Trust Receipts outstanding. Clause 1 of the Guarantee is in terms wider than Ex. D 1 and is a continuous guarantee to the extent of $400,000.00. The Plaintiffs knew or must have known that Ex. D 1 was not effective.

We now come to deal with Section 133A of the Companies Act. This section came into force on the November 15, 1974 (Act No. 10 of 1974), and the relevant parts of which read as follows:–

"133A (1) Subject to the provisions of this section, it shall not be lawful for a Company –

(a) to make a loan to another company; or

(b) to enter into any guarantee or provide any security in connection with a loan made to another company by a person other than the first-mentioned company,

if a director or directors of the first-mentioned company is or together are interested in shares in the other company of a nominal value equal to one-fifth or more of the nominal value of its equity share capital."

The question was whether the Guarantee was unlawful and/or unenforceable under section 133A.

The learned trial Judge in his Judgment said:

"It is necessary in construing the section to give effect to two fundamental principles of statutory interpretation, namely:–

(i) 'that no statement shall be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication' – *Maxwell* on Interpretation of Statues, 12th Edition page 215; and

(ii) that 'if there is any ambiguity in the words which set out the elements of an act or omission declared to be an offence, so that it is doubtful whether the act or omission in question in the case falls within the statutory words, the ambiguity will be resolved in favour of the person charged.' (*Ibid* page 240)."

The learned trial Judge thought that to give to the section the meaning contended for by the Defendants would violate both principles.

He accepted the submissions of the Plaintiffs which were along the following lines. The conduct penalised by the section is the entering into of a guarantee. Section 133A of the Companies Amendment Act came into operation on the November 15, 1974, and only affects all guarantees made on or after that date. The present Guarantee was entered into on July 31, 1974. The section said nothing at all which could or might invalidate any guarantee already entered into at that date nor its perfor-

mance, enforceability or discharge. The Guarantee made on July 31, 1974, is expressed to be "a continuing guarantee"; it is not a succession of separate guarantees. But the learned Judge failed to appreciate that the advances to Ta Leong were made only after November 15, 1974 and the effect the section would have in such a case.

The learned trial Judge also held that there is no reason or justification for giving the section retrospective effect. To do so would have invalidated overnight a large number of guarantees held by banks and others, in good faith as security, in Singapore and would involve a large number of perfectly respectable guarantors in the commission of criminal offences, a result which it is inconceivable the legislature could have intended without express terms. But the question of giving the section retrospective effect does not arise.

In our view, the key words of the section are "it shall not be lawful for a Company". These words are in themselves precise and unambiguous. No one can doubt what the words mean. In the *Sussex Peerage Case*(1) the Judges of the House of Lords expressed the view that Acts of Parliament were to be construed "according to the intent of the Parliament which passed the Act". Tindal C.J., delivering the opinion of the Judges said (at p.1057):

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

The mischief which the legislature clearly intended to prevent by section 133A is fraud on the minority shareholders. It is conceded, by the Defendants, and in our view properly conceded, that the section could not have retrospective effect. But no monies were advanced by the Plaintiffs to Ta Leong until October/November, 1975, well after section 133A had come into force. These transactions are therefore caught by the section and the effect of the section on the Guarantee is to discharge it by frustration as the further performance of it has become illegal.

For these reasons we allowed the appeal with costs against the Plaintiffs.

Appeal allowed

Solicitors: *Chung & Co.; Y.M. Jumabhoy & Co.*

S.N. ASWANI v. COLLECTOR OF LAND REVENUE

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.)
May 28, 1982]
[Singapore – Civil Appeal No. 35 of 1981]

Land Acquisition – Controlled premises – Recent purchase of premises for $750,000 – Appeals Board compensation for acquisition in the sum of $447,980 – Appeal against said valuation – Control of Rent Act (Cap. 266) – Land Acquisition Act (Cap. 272), ss. 3, 5, 15 & 33.

Land Acquisition – Controlled premises – Recent sale – Valuation – Method of assessment.

The premises in question was No. 92 of High Street which was also rent-controlled. One Hazoor, a tenant of the ground floor of the said premises, purchased it from the owners for $400,000 in November 1973. The upper floors of the said premises were occupied by other tenants. Subsequently the premises of No. 92 High Street with vacant possession of the ground floor was offered for sale to the appellant who exercised the option in November 1973.

In August 1973 another property at No. 86 High Street was sold to its tenant at $500,000.

On July 15, 1977, pursuant to the provisions of the Land Acquisition Act, the Collector made an award of $123,600 to the appellants for No. 92 High Street. The appellant appealed to the Appeals Board. He was awarded $447,980 by the Board. The Board considered that the appellant had paid a "special price" for the land and because the undisputed evidence before it was that "there are occasions where sitting tenants would pay as much as and sometimes, more for a property than an outsider will pay to get possession." He appealed.

Held, allowing the appeal: (1) the compensation to be awarded for land acquired under the Land Acquisition Act (Cap. 272) must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser and that what is meant in general by the expression "market value" in the said Act is that its value in general can be measured by a consideration of the prices that have been obtained for land of similar quality and in similar positions;

(2) there was no evidence to justify the Board's finding that the appellant had paid a "special price" when he purchased the property in November 1973. The price the appellant paid was, clearly on the evidence, a price which the vendor could reasonably expect to obtain from any willing purchaser and which the appellant as a willing purchaser, would reasonably expect to have to pay to the owner as a willing vendor;

(3) the market value of rent-controlled property which is tenanted is appreciably lower than its market value if it is not tenanted. The reason is because the owner cannot reasonably expect to obtain the price for his property if he sells it without vacant possession that he would obtain if he sells it with vacant possession;

(4) the award of the Board would therefore be quashed and substituted by an award of $750,000.

COURT OF APPEAL.

L.A.J. Smith for the appellant.

M. Karthigesu for the respondent.

Cur. Adv. Vult.

Wee Chong Jin, C.J. (delivering the judgment of the Court): In July 1973, Mr. Hazoor Singh Kalra entered into a contract to purchase No. 92 High Street. The purchase price was $400,000.00. He was then the tenant of the ground floor of the premises, which are rent-controlled premises. The upper floors were occupied by other tenants. The sale was completed in November 1973. Soon after completion the new owner of No. 92 High Street was minded to sell and granted an option to a land broker to purchase the property at the price of $750,000.00 with vacant possession of the ground floor.

The broker approached Mr. Sugnomal Nathumal Aswani, the appellant in this appeal and told him that No. 92 High Street was for sale with vacant possession of the ground floor for $750,000.00 and that he had an option to purchase from the owner. Mr. Aswani was in the wholesale textile business and had carried on his business under the firm's name of N. Sugnomal at No. 76A High Street since 1955. Mr. Aswani was interested as for some years he had been looking for a shop in upper High Street which is the centre for big scale wholesale textile business in Singapore. He decided to purchase No. 92 High Street. Accordingly, he exercised the option in November 1973.

For the purpose of obtaining a loan from a bank, No. 92 High Street was valued by C.H. Williams & Co. (Pte.),